## REMARKS

1. Applicant acknowledges the Examiner's citation to U.S. Pat. No. 6,606,709 issued to Connery *et al.* ("Connery") in view of U.S. Pat. No. 6,732,267 issued to Wu *et al.* ("Wu") as forming the basis for the Office Action's rejection of Applicant's claims 1-3, 6, 8, 9-15, 19-24, 28-31, and 35 under 35 U.S.C. § 103(a). Applicant objects with traverse to Connery in view of Wu rendering obvious Applicant's claims 1-3, 6, 8, 9-15, 19-24, 28-31, and 35.

   The Supreme Court recently addressed the issue of obviousness in *KSR International Co. v. Teleflex Inc.*, 127 S. Ct. 1727 (2007). "While the *KSR* Court rejected a rigid application of the teaching, suggestion, or motivation test in an obviousness inquiry, the Court acknowledged the importance of identifying 'a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does' in an obviousness determination."[1] The *prima facie* case of obviousness still requires: 1) some suggestion or motivation in references or in knowledge of those skilled in the art to modify a reference, 2) that the references possess a reasonable expectation of success in the modification or combination, *and* 3) that the references must teach or suggest all of Applicant's claim elements and limitations.[2] Below, and in addition to previous arguments of record, Applicant shows that Connery in view of Wu fails to make obvious any of Applicant's claims 1-3, 6, 8, 9-15, 19-24, 28-31, and 35.

   Connery in view of Wu fails to render obvious any of Applicant's independent claims, namely claims 1, 9, 12, 20, 23 and 28 because Connery in view of Wu does not teach or suggest all of Applicant's claim elements and limitations in these independent claims.[3]

   First, and contrary to the Office, Connery does not teach Applicant's claim 1's first claim element and limitation, namely "receiving, at a client of a computer system a modified wake-on-LAN packet via a network receive buffer on the client, the modified wake-on-LAN packet

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[1] *Takeda Chemical Industries, Ltd., et al. v. Alphapharm Pty., Ltd et al.*, 2007 U.S. App. LEXIS 15349, *12-13 (Fed. Cir. 2007) (quoting *KSR International Co. v. Teleflex Inc.*, 127 S. Ct. at 1731 (2007)).
[2] MPEP § 2142; *In re Vaeck*, 947 F.2d 488, 493 (Fed. Cir. 1991); *In re Merck & Co., Inc.,* 800 F.2d 1091, 1097 (Fed. Cir. 1986); *In re Royka*, 490 F.2d 981, 985 (C.C.P.A. 1974).
[3] Id.

comprising executable code." Neither at the Office's citations to Connery at col. 2, ll. 5-15, col. 6, ll. 1-25, nor elsewhere in Connery, does Connery teach or suggest Applicant's "the modified wake-on-LAN packet comprising executable code." Instead, Connery teaches, "adding a security feature to the Wake On LAN packet" and "allowing for other commands and options to be specified within the secure message packet," wherein the "received network packet carry[ies] a message from a source to the management circuits in the host computer." Further, "the logic includes security logic that is responsive to data in the packet to authenticate the source of the message…" Here, it is clear that Connery teaches or suggests placing security commands and options in a Wake ON LAN for carrying a message from source to receiver. This is not Applicant's claimed "executable code" in its "modified wake-on-LAN packet." Furthermore, the Office expressly admits that Wu does not teach or suggest Applicant's claim 1's first element and its limitations. Accordingly, Connery, even in view of Wu, fails to teach or suggest Applicant's independent claim 1. Using the same rationale as the Office does at the second paragraph of page 4 of the Office Action, Connery, even in view of Wu, also fails to teach or suggest all of the claim elements and limitations of Applicant's other independent claims 9, 12, 20, 23 and 28. Therefore, none of Applicant's independent claims, or any claims depending therefrom, are obvious as a matter of law.[4] Withdraw of the obviousness rejections as to claims 1-3, 6, 8, 9-15, 19-24, 28-31, and 35.is respectfully requested.

Second, Applicant agrees with the Office in that Wu does not teach Applicant's first claim element and its limitations and Connery does not teach Applicant's second, third and fourth claim elements and its limitations in claim 1. Applicant disagrees, however, that Wu teaches Applicant's second, third and fourth claim elements and its limitations in claim 1. In addition to either Connery or Wu failing to mention anything about Applicant's "executable code" in Applicant's "modified wake-on-LAN," the Office's cited sections of Wu, namely its Abstract and col. 2, ll.19-36, discuss "updating a system BIOS" "by storing the updated BIOS" etc. Applicant's claimed invention, however, is different from merely updating BIOS or merely storing an updated BIOS like Wu. By contrast, Applicant's claimed invention uses

[4] *In re Fine*, 837 F.2d 1071, 1076 (Fed. Cir. 1988)(if independent claim is allowable, then so are the dependent claims).

the BIOS to achieve an end, *i.e.*, to retrieve and process executable code found in a modified-WOL that is stored in memory associated with the network receive buffer. None of this is taught or suggested in Wu and *KSR* dictates the importance of identifying a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does in an obviousness determination.[5] That is absent here and further evidenced by the fact that the combination of Connery and Wu would not possess a reasonable expectation of success in the modification or combination, a reason in itself for non-obviousness as a matter of law that refutes.[6] Here, if Connery's WOL packet informed BIOS by "message" that a BIO update exists, then BIOS would update itself on the next boot. In Applicant's invention, however, the executable code in the WOL packet is processed by BIOS and informs BIOS that BIOS should boot off a particular area, *e.g.*, PARTIES or other partition, which may not be bootable or detectable by the operating system. As can be seen, the combination of Wu and Connery teach something different than Applicant's claimed invention. Accordingly, not only does the combination not result in success, but Connery and Wu both fail to teach storing, retrieving or processing any "executable code" and that "executable code" being in a "modified wake-on-LAN packet" that is processed "using the BIOS." Accordingly, Wu, even in view of Connery, fails to teach or suggest Applicant's independent claim 1. Using the same rationale as the Office does at the second paragraph of page 4 of the Office Action, Wu, even in view of Connery, also fails to teach or suggest all of the claim elements and limitations of Applicant's other independent claims 9, 12, 20, 23 and 28. Therefore, none of Applicant's independent claims, or any claims depending therefrom, are obvious as a matter of law.[7] Withdraw of the obviousness rejections as to claims 1-3, 6, 8, 9-15, 19-24, 28-31, and 35.is respectfully requested.

2. Applicant acknowledges the Examiner's citation to Connery in view of Wu and further in view of U.S. Pat. No. 6,542,979 issued to Eckardt ("Eckardt") as forming the basis for the

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[5] *Takeda Chemical Industries, Ltd., et al. v. Alphapharm Pty., Ltd et al.*, 2007 U.S. App. LEXIS 15349, *12-13 (Fed. Cir. 2007) (quoting *KSR International Co. v. Teleflex Inc.*, 127 S. Ct. at 1731 (2007)).

[6] MPEP § 2142; *In re Vaeck*, 947 F.2d 488, 493 (Fed. Cir. 1991); *In re Merck & Co., Inc.,* 800 F.2d 1091, 1097 (Fed. Cir. 1986); *In re Royka*, 490 F.2d 981, 985 (C.C.P.A. 1974).

[7] *In re Fine*, 837 F.2d 1071, 1076 (Fed. Cir. 1988)(if independent claim is allowable, then so are the dependent claims).

Office Action's rejection of Applicant's claims 4, 5, 7, 16-18, 25-27, and 32-34 under 35 U.S.C. § 103 (a). Applicant objects with traverse to Connery in view of Wu and further in view of Eckardt rendering obvious Applicant's claims 1-3, 6, 8, 9-15, 19-24, 28-31, and 35. As previously shown under this Response's section 1, since Connery in view of Wu does not render obvious any of Applicant's independent claims, then none of the dependant claims, namely claims 4, 5, 7, 16-18, 25-27, and 32-34, can be deemed obvious as a matter of law even in view of Eckardt.[8] Based on such, withdraw of the obviousness rejections as to all dependent claims, namely claims 4, 5, 7, 16-18, 25-27, and 32-34, is respectfully requested.

[8] *Id.*

## CONCLUSION

Based on the foregoing, Applicant respectfully submits that the application is in condition for allowance. Applicant invites the Office to freely reach Applicant's attorney at the contact information found in the signature block below.

No fee is believed due with this paper. However, if any fee is determined to be required, the Office is authorized to charge Deposit Account 50-3533 for any such required fee.

Respectfully submitted,

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